

MT LEGISLATIVE HISTORY

Chapter 572 19 79

Bill H _____ S 155

Original bill & hist. ☒ C

H. Committee on _____

S. Committee on _____

Hearing Date(s) _____ C

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____

Report _____

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 856	"An act to exempt salaried employees from being paid in accordance with actual end-of-period payroll; amending section 2-18-405, MCA"	2/17/79	Vincent	2/20/79	AS AMENDED DO PASS	2/20/79
SB 150	"An act to generally revise the occupational disease act of Montana; amending sections"	2/13/79	Mehrens	3/1/79	CONCURRED IN	3/1/79
SB 155	"An act to exempt certain employees from provisions of the overtime compensation law."	2/10/79	Boylan	3/1/79	AS AMENDED, BE CONCURRED IN	3/8/79
SB 190	"An act to revise the exclusions from membership in the public employees' retirement system by excluding students in public educational institutions and those CETA...."	2/13/79	Stimatz	3/1/79	CONCURRED IN	3/1/79
SB 208	"An act to generally revise and clarify the laws relating to labor; enacting section 39-1-101, MCA; and repealing sections 41-901 through 41-909, 92-613, and 92-1340...."	2/21/79	Hafferman	3/6/79	CONCURRED IN	3/8/79
SB 266	"An act to amend section 39-5-102, MCA, to exclude musical booking services from the employment agency act and booking service."	2/13/79	Palmer	3/3/79	CONCURRED IN	3/3/79

CHAPTER NO. 572.

SENATE BILL NO. 155

INTRODUCED BY BOYLAN, KOLSTAD

IN THE SENATE

January 18, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 1, 1979	Committee recommend bill do pass as amended. Report adopted.
February 3, 1979	Printed and placed on members' desks.
February 5, 1979	Second reading, do pass.
February 6, 1979	Considered correctly engrossed.
February 7, 1979	On motion taken from third reading and referred to second reading. Second reading, do pass as amended.
February 8, 1979	Correctly engrossed.
February 9, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 10, 1979	Introduced and referred to Committee on Labor and Employment Relations.
March 9, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 13, 1979	Second reading, concurred in as amended.
March 16, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 17, 1979	Returned from second house. Concurred in as amended.
March 19, 1979	Second reading, pass consideration.
March 20, 1979	Second reading, amendments rejected. On motion, Joint Conference Committee requested.
March 21, 1979	Joint Conference Committee appointed.
March 30, 1979	Joint Conference Committee reported.
March 31, 1979	Second reading, adopted.
April 2, 1979	Third reading, adopted.
April 3, 1979	Adopted by House.
April 4, 1979	Sent to enrolling. Reported correctly enrolled.

1 *Amended* BILL NO. *155*
2 INTRODUCED BY *Boyle* *Helstad*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT CERTAIN
5 EMPLOYEES FROM PROVISIONS OF THE OVERTIME COMPENSATION LAW."
6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Overtime exclusions. The provisions of
9 39-3-405 do not apply to:

10 (1) an employee with respect to whom the interstate
11 commerce commission has power to establish qualifications
12 and maximum hours of service pursuant to the provisions of
13 49 U.S.C. 304;

14 (2) an employee of an employer subject to the
15 provisions of part I of the Interstate Commerce Act;

16 (3) an individual employed as an outside buyer of
17 poultry, eggs, cream, or milk, in their raw or natural
18 state;

19 (4) an employee of a street, suburban or interurban
20 electric railway, or local trolley or motorbus carrier;

21 (5) an employee of a gasoline service station;

22 (6) a salesman, partsman, or mechanic primarily
23 engaged in selling or servicing automobiles, trucks, or farm
24 implements if he is employed by a nonmanufacturing
25 establishment primarily engaged in the business of selling

1 such vehicles or implements to ultimate purchasers;

2 (7) a salesman primarily engaged in selling trailers,
3 boats, or aircraft if he is employed by a nonmanufacturing
4 establishment primarily engaged in the business of selling
5 trailers, boats, or aircraft to ultimate purchasers;

6 (8) an employee employed as a driver or driver's
7 helper making local deliveries who is compensated for such
8 employment on the basis of trip rates, or other delivery
9 payment plan, if the commissioner finds that such plan has
10 the general purpose and effect of reducing hours worked by
11 such employees to or below the maximum workweek applicable
12 to them under 39-3-405;

13 (9) an employee employed in agriculture or in
14 connection with the operation or maintenance of ditches,
15 canals, reservoirs, or waterways not owned or operated for
16 profit and not operated on a sharecrop basis and which are
17 used exclusively for supply and storing of water for
18 agricultural purposes;

19 (10) an employee with respect to his employment in
20 agriculture by a farmer, notwithstanding other employment of
21 such employee in connection with livestock auction
22 operations in which such farmer is engaged as an adjunct to
23 the raising of livestock, either on his own account or in
24 conjunction with other farmers, if such employee is:

25 (a) primarily employed during his workweek in

1 agriculture by such farmer; and

2 (b) paid for his employment in connection with such
3 livestock auction operations at a wage rate not less than
4 that prescribed by 34-3-404;

5 (11) an employee of an establishment commonly
6 recognized as a country elevator, including an establishment
7 which sells products and services used in the operation of a
8 farm, if no more than five employees are employed by the
9 establishment;

10 (12) a driver employed by an employer engaged in the
11 business of operating taxicabs;

12 (13) an employee who is employed with his spouse by a
13 nonprofit educational institution to serve as the parents of
14 children who are orphans or one of whose natural parents is
15 deceased or who are enrolled in such institution and reside
16 in residential facilities of the institution so long as the
17 children are in residence at the institution and so long as
18 such employee and his spouse reside in such facilities and
19 receive, without cost, board and lodging from the
20 institution and are together compensated, on a cash basis,
21 at an annual rate of not less than \$10,000; or

22 (14) an employee employed in planting or tending trees;
23 cruising, surveying, or felling timber; or transporting logs
24 or other forestry products to a mill, processing plant,
25 railroad, or other transportation terminal if the number of

1 employees employed by his employer in such forestry or
2 lumbering operations does not exceed eight.

-End-

MARCH 1, 1979
PROCEEDINGS OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

The meeting was called to order at 12:30 p.m. by Chairman Williams. The secretary took roll. Reps. Seifert and Teague were excused.

SENATE BILL 155: Larry Huss, Montana Auto Dealers Association, said he had been asked by Senator Boylan, sponsor, to explain the bill. He said that under the federal wage act certain employees are exempt from the provisions of overtime. He said the courts had decided that those employees who were exempted by the federal act would be covered by the state act. He said HB 155 would provide the same exemptions to the state law that apply to federal law.

The following proponents gave written testimony and spoke in favor of the bill:

George Selover, Billings, Selover Buick (exhibit 1).
Gerald Raunig, Helena, Montana Automobile Dealers' Assc. (exhibit 2).
Bob Leinart, Fort Benton, Power Motors (exhibit 3).
Avis Ann Tobin, Helena, Mt. Hardware & Implement Assc. (exhibit 4).
R.W. Solbert, Great Falls, Bison Motor Co. (exhibit 5).
William Jones, Great Falls, car salesman, (exhibit 6).
Donald Clayton, Great Falls, mobile home dealer, (exhibit 7), said he supports the bill with an amendment to include mobile home and R.V. salesmen.
Ed Sheehy, Jr., Montana Manufactured Housing Association, said he supported the bill and offered an amendment (exhibit 8).

The following opponents gave written testimony and spoke against the bill:

James Murry, Montana State AFL-CIO, (exhibit 9).
Dick Kane, Labor Standards Division, (exhibit 10).
Carl Bakker, Havre, (exhibit 11).
James Murr, Great Falls, Machinists Dist. Lodge # 29 (exhibit 12).
Don Judge, AFSCME, AFL-CIO, briefly spoke against the bill.

Petitions opposing SB 155 were submitted (exhibits 13, 14, 15).

In closing, Senator Boylan said he had no personal interest in SB 155. He said the problem was drawn to his attention last summer when he was visiting with his farm implement dealer. He said he is in no way against organized labor, but did not think this would come under organized labor.

Questions were asked by the committee.

SENATE BILL 190: Senator Stimatz, sponsor, said the bill deals with the employer contribution to the Public Employees Retirement System (PERS) for CETA workers, students, and certain city and county administrators. He submitted a letter from Bruce DeRosier, Governor's Employment and Training Council, (exhibit 16) that explained PERS in

SENATE BILL 208: Senator Hafferman, sponsor, said HB 208 was a code commissioner bill and introduced John Bobinski from the Code Commissioner's office who explained the bill to the committee.

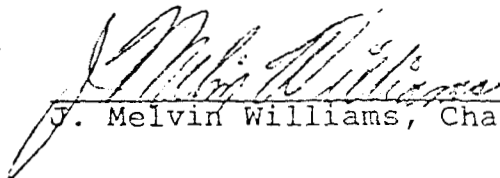
Tom Dowling, said he was a proponent of the bill and offered an amendment (exhibit 3). There were no opponents. Questions were asked by the committee.

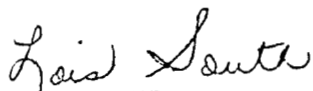
Rep. Dassinger said he thought code commissioner bills were to clean up the books and make the law more readable, and thought an amendment to a code commissioner bill inappropriate.

SENATE BILL 155: Chairman Williams had Dick Kane introduce Richard Perkins to the committee. Mr. Perkins is a compliance officer with Dept. of Labor and Industry for the federal government. He explained the federal overtime compensation law to the committee.

SENATE BILL 467: Rep. Williams said that Senator Lowe, sponsor of SB 467, was out of town and had asked that the bill be postponed until Thursday.

Meeting adjourned at 2:00 p.m.


J. Melvin Williams, Chairman


Lois South, Secretary

Harrington, Manning, Menahan, Pavlovich, and Teague voted no. A motion was made by Rep. Fagg that SB 208 BE CONCURRED IN. Rep. Harrington made a substitute motion that SB 208 NOT BE CONCURRED IN. Rep. O'Connell made a motion to all motions pending to reconsider their action on the amendments. It was moved by Rep. Williams that the amendments to SB 208 NOT BE CONCURRED IN. Motion carried 12-4. Reps. Seifert, Underdal, Ellerd and Porter voted no. It was moved by Rep. Harrington that SB 208 BE CONCURRED IN as is. Motion carried 14-2. Reps. Porter and Ellerd voted no.

SENATE BILL 280: It was moved by Rep. Menahan that SB 280 NOT BE CONCURRED IN. Rep. Harrington made a substitute motion to TABLE SB 280. Rep. Ellerd said he objected to tabling the bill and said he would bring it out on the house floor.

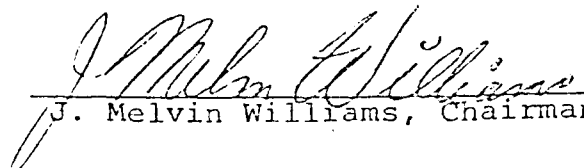
Rep. Harper arrived.

Rep. Stobie made a motion to all motions pending that SB 280 BE CONCURRED IN. There was discussion among the committee members. Rep. Williams said a motion to TABLE in nondebatable. The committee voted on the motion to TABLE SB 280. Motion carried 9-8. Reps. Ellerd, Fagg, Harper, Porter, Seifert, Stobie, Wyrick, and Underdal voted no.

Rep. Ellerd was excused.

SENATE BILL 155: Rep. O'Connell presented amendments to SB 155 (exhibit 3) and moved that they DO PASS. Motion carried 9-8. Reps. Williams, Fagg, Porter, Seifert, Stobie, Underdal, Wyrick, and Ellerd voted no. Rep. O'Connell moved that SB 155 BE CONCURRED IN. Motion carried 11-6. Reps. Ellerd, Fagg, Porter, Seifert, Underdal, and Wyrick voted no.

Meeting adjourned at 2:00 p.m.


J. Melvin Williams, Chairman


Lois South, Secretary

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

<u>SENATE</u> BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
SB #8	1/22/79	2/6/79	2/13/79	2/13/79					
SB #29	1/4/79	1/6/79	1/6/79	1/6/79					
SB #110	1/16/79	1/23/79	2/1/79		2/1/79				
SB #111	1/16/79	1/23/79	2/13/79		TABLED				
SB #140	1/17/79	1/25/79	1/25/79			1/25/79			
SB #141	1/17/79	1/25/79	1/27/79			1/27/79			
SB #150	1/18/79	1/30/79	2/1/79	2/1/79					
SB #155	1/18/79	1/27/79	1/30/79			1/31/79			
SB #161	1/18/79	2/13/79	2/13/79	2/13/79					
SB #180	1/19/79	-----	1/22/79	Referred to Business & Industry Committee					
SB #190	1/22/79	2/6/79	2/6/79			2/7/79			
SB #208	1/24/79	2/1/79	2/1/79			2/1/79			
SB #208	2/10/79	2/13/79	2/13/79			2/13/79			
SB #214	1/24/79	-----	1/31/79	Referred to Judiciary Committee					
SB #239	1/26/79	2/13/79	2/13/79		2/13/79				
SB #252	1/25/79	2/13/79	2/17/79			2/17/79			

Use a separate sheet for Senate, House Bills, and resolutions.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 27, 1979

A meeting of the Labor & Employment Relations Committee was called to order by Chairman Lowe on January 27, 1979, in Room 404 of the State Capitol at 1:30 p.m.

ROLL CALL: All members were present.

Chairman Lowe introduced Senator Paul Boylan from District 38 in Bozeman to introduce Senate Bill #155, as Senator Boylan is the sponsor of this bill.

Senator Boylan explained that this bill was designed to exempt salesman, parts distributors, mechanics, service station attendants, drivers, etc. from the overtime compensation laws. Senator Boylan felt that these people should not be covered under the overtime compensation laws as they were not covered under the Federal Act, and should not be so covered under the State Act. Senator Boylan urged a Do Pass on this bill.

Chairman Lowe then asked for proponents to this bill.

PROPOSERS: Mr. Gerald F. Raunig of the Montana Auto Dealers Association in Helena, Montana, testified that they supported this bill in that it was virtually impossible to keep their salesman on a 40 hour work week and if they had to pay overtime, the costs to the consumer would be much higher. Mr. Raunig felt that the State bill should be in line with the Federal Act covering exemptions to the overtime compensation laws.

The next proponent was Robert H. Oakland of City Motor Co., Inc., in Great Falls. Mr. Oakland said it was difficult to determine when a salesman was selling and when he was not, and that the incentives of bonuses and commissions worked much better for his employees than the overtime requirement.

Mr. George H. Selover of Selover Buick then testified as a proponent and his statement is attached as Exhibit "A".

Ms. Santovan of the Hardware & Farm Equipment Co. urged a Do Pass on this bill as the salesmen and parts employees of that company were subject to work the hours convenient to the farmers in the area and involved working at night and on weekends in order to service the farm community.

Other proponents of this bill were Vaughn D. Dutro, Conrad Implement Co.; Edwin V. Swanson, Farm Equipment Sales, Inc., Glasgow, Montana; Tom Markle, Markle's Inc., Glasgow, Montana; James T. Harrison, Jr., Montana Equipment Dealers Association, Helena, Montana; Larry Huss, Attorney representing Montana Auto Dealers Association, Helena, Montana; Ed Sheehy, Jr., representing Montana Manufactured Housing Association, Helena, Montana; C. L. Overfelt, Attorney representing the Yellow Cab and Black and White Cab Companies from Great Falls, Montana; Mr. Byron Wills, Black & White Cab Company in Great Falls; Ward Davison, Helena Cab Inc., Helena, Montana; Bob McCloud, Great Falls, Montana, and Dick Peterson, Diamond Cab Co., Great Falls, Montana. The testimony sheets for Alfred J. Wilson of Yellow Cab Co., Great Falls, and Avis Ann Tobin, Montana Valve and Implement Association, Helena, are attached.

Mr. Tom Harrison of the Montana Equipment Dealers Association suggested an amendment be included on line 23, page 1, to include industrial mining, logging or construction equipment. Mr. McCloud, motel owner, also suggested amendment to include motel employees. (Exh. "B") Mr. Ed Sheehy also proposed an amendment to the bill to include mobile homes and recreational vehicles and this amendment is attached to the minutes as Exhibit "C".

Basically, the testimony by the above individuals was basically the same with the exception of the taxi companies and most of the proponents of the bill from the taxi companies indicated that they could not afford to pay taxi drivers overtime compensation and felt that their sales would go down if the percentage of the business incentive was removed.

OPPONENTS: Mr. Jim Murry representing the Montana State AFL-CIO, Helena, Montana, felt that this bill was not in the best interest of the workers in the State of Montana.

Mr. Dick Kane, Administrator of the Labor Standards Division, spoke in opposition to the bill and his testimony is attached as Exhibit "D".

Mr. D. Patrick McKittrick representing the Joint Council of Teamsters No. 2 spoke in opposition to the bill and explained that he had co-sponsored the original bill which included salesmen, mechanics, etc., in the bill and explained the legislative intent at the time the original bill was introduced. He felt that the lower income people would suffer if this bill was passed.

Mr. Joe Rossman of the Montana Joint Council of Teamsters then spoke in opposition to the bill and felt that some regulation of hours and pay was needed in the State.

Other opponents of the bill were Arlyn Plowman, Cement Workers Local #239, Bozeman, Montana; Kenneth D. Clark, United Transportation Union, Miles City, Montana.

The meeting was then opened to questions from the Committee and Senator Dover asked if the commissions and bonuses would equal what they would get if they were working overtime to which Mr. Kane explained that in the case of mechanics and taxi drivers the minimum wage requirement would not be met.

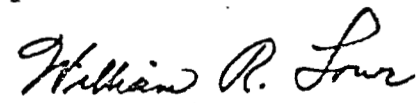
Senator Lowe then asked Senator Boylan how he had come to author this bill to which Senator Boylan said that he had been approached by members of his community in the farm equipment dealerships wherein they wanted to abide by the federal standards and were having difficulty complying with the state standards as these two acts were conflicting.

After more general discussion of this bill, Chairman Lowe indicated that the Committee had run out of time and appointed a sub-committee to research this bill and its effects on the people of the State. Senators Dover, Severson and Hafferman were appointed to this sub-committee.

Chairman Lowe then asked the Committee if they agreed with the amendments proposed in Senate Bill #141. Their being no objections to the amendments, Senator Palmer moved that this bill be passed as amended; seconded by Senator Dover and passed unanimously.

Due to the lack of time, Senate Bill #150 was not heard and was held over to the next meeting to be held on January 30, 1979.

The meeting adjourned at 2:57 p.m.


Senator William R. Lowe

11. Let's look at mechanics ~~for~~ parts.
Many auto mechanics in the parts
of Montana or other states are paid on
a flat rate system. This basically means
that they earn a percentage, usually
45% to 50%, of the hourly rate charged the
retail customer, by ~~any particular dealership~~
~~This rate hourly rate~~ is multiplied by
the flat rate hours or fraction thereof
that the workman, manual published by
the manufacturer, specifies a certain job
should take. As an example if a
certain transmission overhaul requires
~~4.0~~ 4.5 hours and the hourly rate is \$15 per
hour, the labor charge would be ~~\$67.50~~ \$67.50.
If the mechanic receives 45% of this
charge, his pay would be ~~\$30.38~~ \$30.38 for
that particular job. If a mechanic
can perform that job because of
experience in 3 1/2 hours he naturally is
making more money. On the other
hand if it takes him 4 hours he still
only receives the ~~\$30.38~~ \$27.00

~~These mechanics then are naturally~~
~~paid on a commission basis similar~~
~~to salesman. To attract in business they~~
~~can work without any profit line,~~

$$45\% \text{ of } 60 = 27.00$$

$$45\% \text{ of } 15/\text{hr} = 6.75 \times 3 = 20.25$$

$$15 \times 1.5 = 22.50 \times 45\% \times 1.5 = \frac{15.06}{20.31}$$

Therefore a mechanic working on this basis is paid on a commission system and as such his time should not be ~~subjected~~ ^{restricted} to overtime requirements. His job may be favorably compared with piece time rates where his energy, skill & work, and experience determine to a great degree what his earnings shall be. The incentive opportunity, coupled with the protection of the threat of having to quit after 40 hours per week if overtime is not allowed, is a change in conditions for the worker for an overtime hour or portion thereof.

Imagine if you will the confession of explaining a bill to a customer if the following were to happen. A customer leaves his car in a 2 P.M. Friday and needs about 4 hours repair job. He needs the car for the weekend. The mechanic agrees to perform the work and is able to complete it in 3 1/2 hours. Without the exception the customer would be charged as in the previous stated example. If however the exception is not available the day would have to be completed in 4 hours.

U
SELOVER

SELOVER

SB 15²

Billings

I AM PLEASED TO HAVE THE OPPORTUNITY TO DISCUSS WITH YOU TODAY THE PROPOSED BOYLAN-KOLSTAD BILL WHICH WOULD REAFFIRM THE OVERTIME EXEMPTION FOR PARTSMEN, SALESMEN, AND MECHANICS IN THE STATE OF MONTANA. THIS THEN WOULD BE SIMILAR TO THE FEDERAL WAGE & HOUR LAW.

TO BEGIN WITH, I WILL RECOUNT SOME OF THE HISTORY OF THE FEDERAL WAGE & HOUR LAW. IT WAS ENACTED IN 1938. THE ORIGINAL LAW EXEMPTED AUTO DEALERS FROM COVERAGE UNDER THAT LAW. DUE TO WHAT CONGRESS THOUGHT WAS MISINTERPRETATION OF THEIR INTENT, THEY AMENDED THE LAW IN 1949 MAKING IT VERY CLEAR THAT THE EXEMPTION DID INDEED APPLY TO THE RETAIL AUTOMOBILE AND TRUCK DEALER. THIS EXEMPTION WAS STRONGLY REITERATED WHEN CONGRESS EXPANDED THE LAW'S COVERAGE AND RAISED THE MINIMUM WAGE. IN 1966 CONGRESS MADE MORE AMENDMENTS AND THIS TIME DID INCLUDE DEALERSHIPS UNDER THE MINIMUM WAGE PORTION OF THE LAW. THEY ALSO, HOWEVER, PRESERVED THE OVERTIME EXEMPTION FOR PARTSMEN, SALESMEN AND MECHANICS. AMENDMENTS WERE INTRODUCED IN 1972, 1973 AND 1974 AND EACH CASE THE OVERTIME EXEMPTION FOR PARTSMEN, SALESMEN, AND MECHANICS WAS MAINTAINED. THESE ARE EIGHT AMENDMENTS I AM AWARE OF, THERE WELL COULD BE MANY MORE.

THE POINT, HOWEVER, IS THAT DURING ALL THIS DELIVERATION OVER THE MANY YEARS, CONGRESS HAS DECIDED AGAIN AND AGAIN THAT PARTSMEN, SALESMEN, AND MECHANICS SHOULD BE EXEMPT FROM THE FEDERAL WAGE AND

How Hour
How LAW OVERTIME PROVISION.

I WILL NOW FOCUS MY ATTENTION ON THE INEQUITIES OF THE 40 HOUR NON OVERTIME LIMIT AS IT PERTAINS TO SALESMEN.

THERE ARE DIFFERENT REASONS WHY THE HISTORICAL EXEMPTION FROM OVERTIME SHOULD APPLY TO SALESMEN. IF A SALESMAN IS TO EXCEL IN HIS FIELD (IF YOU DON'T MIND, I WILL USE THE TERM SALESMAN WITH THE UNDERSTANDING THAT TERM COVERS ALL SALESPERSONS), HE CAN NOT BE LIMITED

BY THE NUMBER OF HOURS HE WORKS. HE MUST BE READY TO SEE AND SERVE THE CUSTOMER WHEN THE CUSTOMER IS READY, NOT WHEN A PARTICULAR HOUR DICTATES THAT MEETING. WHAT WOULD ANY OF YOU THINK IF I WERE TO TELL YOU I COULD ONLY SEE YOU AT 4:30 P.M. TO SHOW YOU A CAR AND THEN I HAD TO DO IT IN 30 MINUTES. AND, IF YOU WANTED TO SPEND MORE THAN 30 MINUTES, I WOULD HAVE TO CHARGE YOU MORE FOR THE CAR BECAUSE I WOULD BE ON OVERTIME. YOU, AND I WOULD DO THE SAME--WOULD GO ELSEWHERE.

^{FOLLOW}
FOLLOW WITH ME IF YOU WILL THROUGH THE FOLLOWING

EXAMPLES:

A. IF A SALESMAN MEETS SOMEONE AT THE ELKS AND THEY START TALKING CARS. IS HE WORKING? IF HE EVENTALLY SELLS HIM A CAR, IF HE EVENTUALLY SELLS HIM A DIFFERENT CAR THAN THE ONE THEY TALKED ABOUT, IF HE DOESN'T SELL HIM A CAR, IS HE WORKING?

B. WE LIKE TO TRAIN OUR SALESMEN TO SELL IMAGINATIVELY AND CREATIVELY. THEY SHOULD CONTINUALLY BE THINKING AND REMINDED OF PEOPLE TO WHOM THEY CAN SELL, NEW TECHNIQUES OF SELLING, AND HONING OLD TECHNIQUES. THIS IS NOT SOMETHING YOU CAN TURN ON AND OFF. GOOD SALESMEN WORK AT IT CONTINUALLY AND SOMETIMES SUBLIMINLY. HOW DO YOU DETERMINE HOW MANY HOURS THEY HAVE WORKED DOING THIS?

C. WHAT OF TRAVELING SALESMEN WHO MAY DRIVE 100 TO 200 MILES BEFORE THEY MAKE A CALL. IT IS POSSIBLE THAT WITHOUT THE EXEMPTION PROVIDED BY THE BOYLAN-KOLSTAD BILL A SALESMAN WOULD BE ON OVERTIME BEFORE HE MAKES HIS FIRST CALL. MONTANA IS ONE OF THE MOST SPARSLY POPULATED STATES IN THE UNITED STATES. WHILE A MONTANA SALESMAN TRAVELS 200 MILES TO MAKE A CALL, A SALESMAN IN A MORE POPULATED AREA CAN TRAVEL 20 MILES TO MAKE 10 OR MORE CALLS. TO HAVE TO PAY OVERTIME TO THE MONTANA SALESMAN AND NOT TO THE OTHER SALESMAN PUTS (A) THE MONTANA SALESMAN AT A COMPETITIVE DISADVANTAGE AND/OR (B) THE PRICING OF PRODUCTS HE SELLS AT AN EVEN HIGHER PRICE THAN IS ENJOYED ELSEWHERE IN THIS COUNTRY.

LET ME RECOUNT OUR EXPERIENCE UNDER THE 40 HOUR LAW AS IT NOW IS INTERPRETED. SALESMEN ARE PAID ON A COMMISSION BASIS. IF THEY DON'T PRODUCE THEY DON'T MAKE THE AMOUNT OF MONEY THEY COULD BY BEING A GOOD PRODUCER. THEIR TIME IS REALLY AT THE MERCY OF THE CUSTOMER AND THEIR TIME IS THEIR ONLY INVESTMENT IN OUR BUSINESS. SHOULD THERE BE A LAW WHICH LIMITS ONE'S INVESTMENT IN HIS BUSINESS?

THERE IS VIRTUALLY NO WAY TO SCHEDULE HOURS SO THAT A SALESMAN CAN MEET HIS CUSTOMERS WHEN IT IS CONVENIENT FOR THE SALESMAN. I CAN TELL YOU FROM PRACTICAL EXPERIENCE THAT MY MANAGERS AND I HAVE SPENT UNTOLD HOURS TRYING TO DEVISE SCHEDULES WHICH COMPLY WITH THE 40 HOUR WEEK. WHAT HAS HAPPENED IS THAT SALESMEN ARE OFTEN NOT ON HAND WHEN SOMEONE THEY HAVE TALKED TO COMES IN. I WOULD ESTIMATE THAT IN MORE THAN 50% OF THE CASES WHERE A SALESMAN SETS UP AN APPOINTMENT FOR A SPECIFIED TIME THE CUSTOMER IS AT LEAST ONE HOUR LATE. ~~THIS BY BEING LATE, THE SALESMAN IS NOW ENTERING CUSTOMER'S AND~~ IF MANAGEMENT IS BUSY, THAT CUSTOMER IS EITHER WAITED ON BY ANOTHER SALESMAN OR FINALLY LEAVES BECAUSE NO ONE IS THERE. YOU WILL UNDOUBTEDLY ANSWER HIRE MORE SALESMEN AND THAT, OF COURSE, IS A SOLUTION. BUT ALL THAT DOES IS TO SPLIT THE SALES COMMISSION PIE UP INTO SMALLER PIECES, PRODUCES LOWER TAKE HOME PAY FOR THE SALESMAN, CREATES UNHAPPY EMPLOYEES AND MUCH MORE TURN OVER. IT ALSO WOULD MEAN TWO OR MORE WOULD WAIT ON ONE CUSTOMER--CONFUSING THE CUSTOMER AND CAUSING ALL INVOLVED TO WANT A PART OF THE COMMISSION. SALESMEN BY THE VERY DEFINITION OF THE TERM CAN NOT BE RESTRICTED TO A SPECIFIED NUMBER OF HOURS. THEY NEED TO SPEND WHATEVER TIME IT TAKES TO GET THE JOB DONE. THE AUTOMOBILE RETAILING BUSINESS IS ONE OF THE MOST COMPETITIVE BUSINESSES THERE IS. IF WE DON'T STAY WITH A CUSTOMER UNTIL HE IS SOLD, SOMEONE ELSE WILL AND WE WILL LOSE THE SALE.

THESE ARE ONLY A FEW EXAMPLES. I COULD GO ON AND ON ABOUT THE PROBLEMS OF TRYING TO ADMINISTER AND SUPERVISE SALESMEN IN AN

ATTEMPT TO HOLD THEM TO 40 HOURS PER WEEK. I WILL TELL YOU RIGHT NOW IT IS IMPOSSIBLE TO DO IT EQUITABLY.

I HAVE TRIED TO POINT OUT SO FAR HOW THE CURRENT LACK OF AN EXEMPTION CAUSES UNDO HARDSHIP AND CONFUSION AND HOW, AS FAR AS SALESMEN ARE CONCERNED, IT IS VIRTUALLY AN UNENFORCEABLE LAW. THERE IS NO ONE IN MY ORGANIZATION WHO CAN ACCURATELY STATE HOW MANY HOURS A SALESMAN WORKS. SURE, WE KNOW HOW MANY HOURS HE IS ON THE PREMISES; BUT WE DO NOT KNOW, NOR CAN WE CONTROL, HOW MANY THINKING HOURS HE SPENDS, NOR WHAT ^{SELLING} TIME IS SPENT OUTSIDE THE DEALERSHIP. TO DESTROY FURTHER THE INCENTIVE TO GO AFTER A SALE EVEN THOUGH SOME MAGICAL NUMBER OF HOURS HAS ALREADY BEEN WORKED IS COUNTER PRODUCTIVE TO THE WELFARE OF THIS STATE AND THIS COUNTRY. FOR REMEMBER EVERY DOLLAR IS A SALES DOLLAR.

I MENTIONED CONFUSION A MINUTE AGO. LET ME QUICKLY RECITE SEVERAL EXAMPLES. I HAVE IN MY HAND A BROCHURE PRINTED BY THE LABOR STANDARDS DIVISION, HELENA, MONTANA. IT STATES IT IS A HANDY REFERENCE GUIDE TO THE MONTANA MINIMUM WAGE LAW OF 1971. INSIDE ON PAGE 1 I WOULD LIKE TO READ TO YOU-----,

FURTHER, I HAVE A COPY OF THE STATUTES OF THE STATE OF MONTANA 41-2307 REFERRING TO THE MONTANA MINIMUM WAGE LAW OF 1971. IT STATES -----,

EVEN THE LABOR STANDARDS DIVISION AND THE LEGISLATURE APPARENTLY INTENDED THAT PARTSMEN, SALESMEN AND MECHANICS BE EXEMPTED FROM THE OVERTIME PROVISION, YET, WE ARE TODAY, TOLD THEY ARE NOT EXEMPTED.

THE UNITED STATES CONGRESS IN AT LEAST 8 AMENDMENTS HAS SPENT UNTOLD HOURS DEBATING THE HISTORIC EXCLUSION FROM OVERTIME PAY FOR PARTSMEN, SALESMEN AND MECHANICS. CERTAINLY, THEIR DELIVERATIONS OVER 40 YEARS LENDS MUCH CREDIBILITY FOR THE NEED TO PASS JUST SUCH A BILL AS ENVISIONED BY SENATOR BOYLAND AND SENATOR KOLSTAD.

LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT THERE ARE OVERRIDING PRICING AND COMPETITIVE SITUATIONS WHICH BEG FOR THE PASSAGE OF THE BOYLAN-KOLSTAD BILL. I FURTHER SUBMIT TO YOU THAT THE OVERTIME LAW OF THE STATE OF MONTANA AS IT PERTAINS TO SALESMEN IS A TOTALLY UNENFORCEABLE LAW, AND ANY LAW WHICH IS UNENFORCEABLE IS A BAD LAW. IT SHOULD BE CHANGED. I URGE YOUR SUPPORT AND PASSAGE OF THE BOYLAN-KILSTAD BILL.

THANK YOU VERY MUCH FOR ALLOWING ME THE OPPORTUNITY TO APPEAR BEFORE YOU THIS AFTERNOON.

IN OUR BUSINESS DEALING AS WE DO WITH SALESMEN, IT IS VIRTUALLY IMPOSSIBLE TO CONTROL OR PREVENT WORK HOUR ABUSE. ALL WE COULD DO IS THREATEN TO FIRE A HARD-WORKING - INDUSTRIOUS SALESMAN IF WE THOUGHT HE WERE VIOLATING WORKING HOURS - TO OBTAIN ADDITIONAL SALES - AND THAT IS IN DIRECT CONFLICT WITH HIS OBJECTIVES AND GOALS. SO, MANAGEMENT ENDS UP WITH A LIABILITY EXPOSURE FOR AN ACTIVITY OVER WHICH THEY LITTLE IF ANY CONTROL AND ONE WHICH IS CONTRARY TO THE BASICS OF SELLING.

Bert M. Conrad
Great Falls -

PROPOSED AMENDMENTS TO SB 155

2. Page 4, line 2.

Following line 2.

Insert: "(15) an employee who resides full-time in a facility
and who has agreed in writing to work for a fixed salary."

Bob McQuinn
Great Falls -

PROPOSED AMENDMENTS TO SB 155

2. Page 4, line 2.

Following line 2.

Insert: "(15) an employee who resides full-time in a facility and who has agreed in writing to work for a fixed salary."

Exhibit "C"
Shucky

PROPOSED AMENDMENT TO SENATE BILL 155

Mr. President:

We, your committee on Labor & Employment Relations, having had under consideration Senate Bill No. 155, respectfully report as follows: That Senate Bill No. 155, second reading (yellow), be amended as follows:

1. Page 1, line 23.

Following: "trucks"

Insert: "mobile homes, recreational vehicles,"

Exhibit a
1-27-79

Mr. Chairman, members of the committee, I am Dick Kane, Administrator of the Labor Standards Division. I am here to testify in opposition to Senate Bill 155.

In reading this proposed legislation, I am shocked to see that in some cases it is aimed at reducing the income of those persons who are at the very bottom of the wage ladder, and in other cases it is asking for exemptions covering groups of employees with no consideration for those employees in the group who are working for marginal wages.

When I first examined this proposed bill, I recognized that the language was taken from the federal Fair Labor Standards Act. A close study revealed that the language was taken from outdated material.

It appears that the intent of this proposed law is to grant the exemptions provided by federal law to those persons employed with firms that are subject to the state minimum wage law. However, the proposed exemption is far broader than that granted by federal law. And, in fact at least two of the exemptions have been repealed from the federal law. They are the exemptions for the employees of street, suburban, or interurban electric railways or local trolley or motorbus carrier and the employees of gasoline service stations.

The exemption proposed for partsmen, salesmen, and mechanics is inequitable in that it will give a blanket exemption from overtime to three distinct types of employment, each with a different wage scale. I have firsthand knowledge of this having been both a mechanic and a franchised new car dealer.

Partsmen are usually paid on an hourly or monthly salary basis and some employers have bonus plans based on total sales. Mechanics work on an hourly or commission basis or a combination of these. Salesmen work on a straight commission or a draw plus commission.

I don't know of a single logical reason why partsmen or mechanics should be exempt from overtime. Mechanics are required to purchase a set of tools to use in their work. They are expensive and are a major investment of the mechanics funds. On numerous occasions, I have seen employers initiate commission and bonus plans for mechanics and, as soon as the mechanic began earning top commissions or bonuses, the plan would be changed. Mechanic's wages are, in most cases, tied directly to the flat rate charged by the shop for the services performed. Shop time in many areas is charged out at \$20 per hour or more and those mechanics working commission get about 40 percent of that.

I have been told on a number of occasions by the owners or operators of farm implement dealerships, auto and truck dealerships, as well as trailer dealerships, that their salesmen make in excess of \$20,000 per year. These employers do not feel that a salesman earning this income needs the benefits of overtime. I guess that I might feel the same way if I was the employer. However, no mention is made by them of the fact that good salesmen earning these high commissions are not all that plentiful, and that there are literally hundreds of salesmen who are relatively unsuccessful and who are literally working for starvation wages. There is a steady flow of mediocre salesmen who are employed for a trial period and who don't make the grade. After a month or two they let go. These are the people who need the protection of an overtime law.

If the committee believes that the successful salesman making in excess of \$20,000 is not entitled to overtime, then perhaps the law should exempt only those salesmen and not the ones who work long hours for little or no commission.

The exemption for house parents contains a provision for a \$10,000 per year salary plus board and room. This sounds like a princely sum until you stop and think about it. Here are two people, on duty 24 hours per day, 7 days per week. When you look at the hours worked, the princely sum becomes a pittance. Allowing 8 hours per day sleeping time, each of the house parents would have an hourly wage of .85 cents per hour plus board and room. This is based on a 16 hour day, 7 days a week.

Truck drivers, and these are the persons who are mentioned in the first section of the bill, are in many instances subject to what is now called Department of Transportation regulations. The hours of these workers are regulated by the federal regulations. My comments on this type of employment would be very similar to the comments I made on the employment of salespeople.

Employees who work in service stations are, in the most part, working for minimum wage and sometimes less. Our field inspections and claims processing have disclosed that there are often times minimum wage violation. In many cases, the employer has made deductions from the worker's wages for bad credit cards, bad checks, and shortages thus further reducing the worker's income. This is done in spite of the fact that such withholdings are not permitted by our state laws.

The exemption provision for the country elevator is very broad, and it appears that it would include any establishment that sold products to a farm as long as it did not employ more than five persons. I don't believe that it is logical to create an exemption based only on the fact that there are less than five employees and the firm sells its product or services to farms.

I know of no instance where we have audited a taxi company where we didn't find one or more minimum wage violations. This means that the driver is working for less than \$2 per hour. While there are some drivers who earn more than the minimum wage, they accomplish this by working long shifts, usually 12 hours or longer.

Our records show that some taxi companys are repeated violators of more than just one of the laws administered by the Labor Standards Division. One company, in particular, has had a list of reoccurring violations dating back to 1971. Another operator of a taxi company had overtime violations in a business he had operated prior to acquiring the taxi business. It isn't just the overtime these employers don't want to pay, they don't want to comply with any of our wage laws.

Our investigations have established that there are taxi companys that owe their employees many thousands of dollars in back wages because of minimum wage and overtime violations.

The exemption for farm labor in Section 9 and 10 is unnecessary. The present Montana Law in Section 39-3-405, Subsection (2) provides

that no overtime provision shall apply to farm workers. I am unaware of any existant claims for overtime filed by farm workers. If such claims would be filed, the claimant would be advised that the employment such as is cited in Secion 9 and 10 of Senate Bill 155 is farm employer and is not subject to the overtime provision of Montana law.

If there are any questions on the farm exemption from overtime, I am sure that they can be addressed in the rules making procedure.

In closing, I believe it would be appropriate to take note of the comments of the Montana Supreme Court in the recent case of a mechanic who successfully sued his employer for overtime wages:

"The employer argues that it is covered by all provisions of the Fair Labor Standards Act except the overtime pay provision indicating an intention by Congress to occupy the whole field and in so preempting to grant it a specific exemption from payment of overtime wages based on a legislative policy to protect agriculture a financially fragile industry.

The time is long past for this contention to prevail."

Exempting low income workers from overtime is unfair and defeats the purpose of the law. The people who are receiving marginal wages are the very ones that the law intended to help. An exemption from overtime would be nothing more than exploitation of these workers by the employer. For the employee who is making \$2 per hour, the state overtime rate is \$3 per hour, just 10 cents more than the federal minimum wage.

Senator Dover then moved that Senate Bill #155 Do Pass, as amended, seconded by Senator Aklestad. A vote was then taken and the motion passed.

Chairman Lowe then asked Mr. Grosfield if he had come up with appropriate language for House Bill #32 previously discussed. Mr. Grosfield submitted the following amendment:

Page 5, line 20.

After: "dependents."

Add: "If, after all funds due the victim have been paid to the victim under this section, there remains additional funds in the escrow account, such funds shall be returned to the individual charged or convicted of the crime." (Exhibit "D")

Senator Dover moved that House Bill #32 as amended be passed. Senator Palmer seconded and motion carried with Senator Aklestad dissenting.

Chairman Lowe then asked Mr. Grosfield to explain Senate Bill #150 to the Committee in the absence of Senator Mehrens. Mr. Grosfield's statement is attached as Exhibit "E".

No proponents or opponents appeared on Senate Bill #150.

In view of the fact that Senators Severson and Palmer had to leave during the discussion of this bill, Chairman Lowe felt that the Committee should postpone moving on this bill until all the members were present.

Chairman Lowe then excused himself from the chair and asked Senator Nelson to take over since he was a sponsor and proponent for Senate Bill #161. Senator Lowe then explained Senate Bill 161 to the Committee in that this act provides for a referendum method of resolving an impasse during municipal labor negotiations. If solutions could not be made by negotiations, then the last offer of each side would be put to a vote of the people to decide.

Senator Lowe then introduced Dan Mizner, Executive Director of the League of Cities and Towns. Mr. Mizner stated that Montana needed a better system when negotiations between cities and unions reached a deadlock. He felt that cities and towns could not afford to do without the services of policemen, firemen, etc. He stated that by going through the Board of Personnel Appeals and then the electorate, this system would place the responsibility of wages and fringe benefits upon the people and that the people should have a say in the wages and benefits that public employees should receive since they were the ones who would have to pay for it ultimately. He stated that this approach was working very well in California and Colorado and felt that it would work well for Montana. He indicated that there was a case in Minnesota where a third party arbitration case had been declared unconstitutional.

Exhibit C

PROPOSED AMENDMENTS TO SB #155

1. Page 1, line 10.

Following: "whom the"

Strike: "interstate commerce commission"

Insert: "United States secretary of transportation"

2. Page 1, line 19 through line 21:

Strike: subsections (4) and (5) in their entirety

Renumber: subsequent subsections

STANDING COMMITTEE REPORT

January 31

19 79

MR. President

We, your committee on Labor & Employment Relations

having had under consideration Senate Bill No. 155

Respectfully report as follows: That Senate Bill No. 155
introduced bill do pass as amended:

1. Page 1, line 10.

Following: "whom the"

Strike: "interstate commerce commission"

Insert: "United States secretary of transportation".

2. Page 1, line 19 through line 21.

Strike: subsections (4) and (5) in their entirety

Renumber: subsequent subsections

And, as so amended

DO PASS

SENATE BILL NO. 155

INTRODUCED BY BOYLAN, KOLSTAD

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT CERTAIN
EMPLOYEES FROM PROVISIONS OF THE OVERTIME COMPENSATION LAW."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Overtime exclusions. The provisions of
39-3-405 do not apply to:

(1) an employee with respect to whom the interstate
commerce commission ~~UNITED STATES SECRETARY OF~~
~~TRANSPORTATION~~ has power to establish qualifications and
maximum hours of service pursuant to the provisions of 49
U.S.C. 304;

(2) an employee of an employer subject to the
provisions of part 1 of the interstate commerce act;

(3) an individual employed as an outside buyer of
poultry, eggs, cream, or milk, in their raw or natural
state;

(4) an employee of a street, suburban or interurban
electric railway or local trolley or motorbus carrier;

(5) an employee of a gasoline service station;

~~(1) AN INDIVIDUAL EMPLOYED AS AN OUTSIDE BUYER OF~~
~~POULTRY, EGGS, CREAM, OR MILK, IN THEIR RAW OR NATURAL~~
~~STATE;~~

~~(1) AN EMPLOYEE WITH RESPECT TO WHOM THE UNITED STATES~~
~~SECRETARY OF TRANSPORTATION HAS POWER TO ESTABLISH~~
~~QUALIFICATIONS AND MAXIMUM HOURS OF SERVICE PURSUANT TO THE~~
~~PROVISIONS OF 49 U.S.C. 304;~~

~~(2) AN EMPLOYEE OF AN EMPLOYER SUBJECT TO THE~~
~~PROVISIONS OF PART 1 OF THE INTERSTATE COMMERCE ACT;~~

~~(3) AN INDIVIDUAL EMPLOYED AS AN OUTSIDE BUYER OF~~
~~POULTRY, EGGS, CREAM, OR MILK, IN THEIR RAW OR NATURAL~~
~~STATE;~~

~~(1)(2)(3)(4) a salesman, partsmen or mechanic PAID ON~~
~~A COMMISSION OR CONTRACT BASIS AND PARISHAN, OR MECHANIC~~
~~PAID ON A COMMISSION OR CONTRACT BASIS AND~~ primarily engaged
in selling or servicing ~~OR SERVICING~~ automobiles, trucks,
MOBILE HOMES, RECREATIONAL VEHICLES, or farm implements if
he is employed by a nonmanufacturing establishment primarily
engaged in the business of selling such vehicles or
implements to ultimate purchasers;

~~(1)(2)(3)(4) a salesman primarily engaged in selling~~
trailers, boats, or aircraft if he is employed by a
nonmanufacturing establishment primarily engaged in the
business of selling trailers, boats, or aircraft to ultimate
purchasers;

~~(1)(2) an employee employed as a driver or driver's~~
~~helper making local deliveries who is compensated for such~~
~~employment on the basis of trip rates or other delivery~~

REFERENCE BILL: Includes Free Joint -2-
Conference Committee Report
Dated 9/28/99

SB 155

1 payment--portion--if--the--com--stationer--finds--that--such--portion--
2 the--generate--purpose--and--effect--of--reducing--hours--worked--by--
3 such--employees--to--of--below--the--next--workweek--applicable
4 to--them--under--39-3-4651
5 (9) (1) on--employees--employed--in--agricultural--or--in--
6 connection--with--the--operation--or--maintenance--of--ditches--
7 canals--reservoirs--or--waterways--not--owned--or--operated--for--
8 profit--and--not--operated--on--a--share--basis--and--which--are
9 used--exclusively--for--supply--and--storing--of--water--for--
10 agricultural--purposes
11 (10) (1) on--employee--with--respect--to--his--employment--in--
12 agricultural--by--a--former--notwithstanding--the--employment--of--
13 such--employee--in--connection--with--the--stock--question
14 operations--in--which--such--former--is--engaged--as--an--adjunct--
15 the--resting--of--the--stock--either--on--his--own--accoun--or--in--
16 connection--with--other--former--if--such--employee--is--
17 (a) primarily--employed--during--his--workweek--in--
18 agricultural--by--such--former--and
19 (b) paid--for--his--employment--in--connection--with--such--
20 stock--operation--at--a--rate--not--less--than--
21 that--prescribed--by--34-3-4641
22 (11) on--employee--of--an--establishment--commonly
23 recognized--as--a--country--club--or--other--establishment
24 which--sets--products--and--services--used--in--the--operation--of--a
25 farm--if--no--more--than--five--employees--are--employed--by--the

1 establishment

2 (12) (1) a--driver--employed--by--an--employer--engaged--in--
3 the--business--of--operating--taxicabs
4 (13) (1) on--employee--who--is--employed--with--his--spouse--by--
5 a--nonprofit--educational--institution--to--serve--as--the--parent
6 of--children--who--are--orphans--or--one--of--whose--natural--parents
7 is--deceased--or--who--are--enrolled--in--such--institution--and
8 reside--in--residence--of--the--institution--so--long
9 as--the--children--are--in--residence--at--the--institution--and--so
10 long--as--such--employee--and--his--spouse--reside--in--such--
11 facilities--and--receive--without--cost--board--and--lodging--from--
12 the--institution--and--are--together--compensated--on--a--cash
13 basis--at--an--annual--rate--of--not--less--than--\$1000--or
14 (14) (1) on--employee--employed--in--planting--or--tending
15 trees--cruising--surveying--or--felling--timber--or--
16 transporting--logs--or--other--forestry--products--to--a--mill--
17 processing--pulp--or--other--transportation--terminal--
18 if--the--number--of--employees--employed--by--his--employer--in--such--
19 forestry--or--timbering--operation--does--not--exceed--eight
20 (15) (1) a--mechanic--parking--in--service--station--
21 establishment
22 (16) (1) an--employee--in--planting--or--tending
23 forest--cruising--surveying--or--felling--timber--or--
24 transporting--logs--or--other--forestry--products--to--a--mill--
25 processing--pulp--or--other--transportation--terminal--
26 (17) (1) a--employee--employed--by--an--employer--engaged--in--
27 the--business--of--operating--taxicabs
28 (18) (1) on--employee--employed--by--an--employer--engaged--in--
29 the--business--of--operating--taxicabs
30 (19) (1) on--employee--employed--by--an--employer--engaged--in--
31 the--business--of--operating--taxicabs
32 (20) (1) on--employee--employed--by--an--employer--engaged--in--
33 the--business--of--operating--taxicabs
34 (21) (1) on--employee--employed--by--an--employer--engaged--in--
35 the--business--of--operating--taxicabs
36 (22) (1) on--employee--employed--by--an--employer--engaged--in--
37 the--business--of--operating--taxicabs
38 (23) (1) on--employee--employed--by--an--employer--engaged--in--
39 the--business--of--operating--taxicabs
40 (24) (1) on--employee--employed--by--an--employer--engaged--in--
41 the--business--of--operating--taxicabs
42 (25) (1) on--employee--employed--by--an--employer--engaged--in--
43 the--business--of--operating--taxicabs

~~IF THE NUMBER OF EMPLOYEES EMPLOYED BY HIS EMPLOYER IN SUCH
FORESTRY OR LUMBERING OPERATIONS DOES NOT EXCEED EIGHT:~~

~~(6) AN EMPLOYEE EMPLOYED AS A DRIVER OR DRIVER'S
HELPER MAKING LOCAL DELIVERIES WHO IS COMPENSATED FOR SUCH
EMPLOYMENT ON THE BASIS OF TRIP RATES, OR OTHER DELIVERY
PAYMENT PLAN, IF THE COMMISSIONER FINDS THAT SUCH PLAN HAS
THE GENERAL PURPOSE AND EFFECT OF REDUCING HOURS WORKED BY
SUCH EMPLOYEES TO OR BELOW THE MAXIMUM WORKWEEK APPLICABLE
TO THEM UNDER 39-3-405;~~

~~(7) AN EMPLOYEE EMPLOYED IN AGRICULTURE OR IN
CONNECTION WITH THE OPERATION OR MAINTENANCE OF DITCHES,
CANALS, RESERVOIRS, OR WATERWAYS NOT OWNED OR OPERATED FOR
PROFIT AND NOT OPERATED ON A SHARECROP BASIS AND WHICH ARE
USED EXCLUSIVELY FOR SUPPLY AND STORING OF WATER FOR
AGRICULTURAL PURPOSES;~~

~~(8) AN EMPLOYEE WITH RESPECT TO HIS EMPLOYMENT IN
AGRICULTURE BY A FARMER, NOTWITHSTANDING OTHER EMPLOYMENT OF
SUCH EMPLOYEE IN CONNECTION WITH LIVESTOCK AUCTION
OPERATIONS IN WHICH SUCH FARMER IS ENGAGED AS AN ADJUNCT TO
THE RAISING OF LIVESTOCK, EITHER ON HIS OWN ACCOUNT OR IN
CONJUNCTION WITH OTHER FARMERS, IF SUCH EMPLOYEE IS:~~

~~(A) PRIMARILY EMPLOYED DURING HIS WORKWEEK IN
AGRICULTURE BY SUCH FARMER; AND~~

~~(B) PAID FOR HIS EMPLOYMENT IN CONNECTION WITH SUCH
LIVESTOCK AUCTION OPERATIONS AT A WAGE RATE NOT LESS THAN~~

~~THAT PRESCRIBED BY 34-3-414;~~

~~(9) AN EMPLOYEE OF AN ESTABLISHMENT COMMONLY
RECOGNIZED AS A COUNTRY ELEVATOR, INCLUDING AN ESTABLISHMENT
WHICH SELLS PRODUCTS AND SERVICES USED IN THE OPERATION OF A
FARM, IF NO MORE THAN FIVE EMPLOYEES ARE EMPLOYED BY THE
ESTABLISHMENT;~~

~~(10) A DRIVER EMPLOYED BY AN EMPLOYER ENGAGED IN THE
BUSINESS OF OPERATING TAXICABS;~~

~~(11) AN EMPLOYEE WHO IS EMPLOYED WITH HIS SPOUSE BY A
NONPROFIT EDUCATIONAL INSTITUTION TO SERVE AS THE PARENTS OF
CHILDREN WHO ARE ORPHANS OR ONE OF WHOSE NATURAL PARENTS IS
DECEASED OR WHO ARE ENROLLED IN SUCH INSTITUTION AND RESIDE
IN RESIDENTIAL FACILITIES OF THE INSTITUTION SO LONG AS THE
CHILDREN ARE IN RESIDENCE AT THE INSTITUTION AND SO LONG AS
SUCH EMPLOYEE AND HIS SPOUSE RESIDE IN SUCH FACILITIES AND
RECEIVE, WITHOUT COST, BOARD AND LODGING FROM THE
INSTITUTION AND ARE TOGETHER COMPENSATED, ON A CASH BASIS,
AT AN ANNUAL RATE OF NOT LESS THAN \$10,000; OR~~

~~(12) AN EMPLOYEE EMPLOYED IN PLANTING OR TENDING TREES;
CRUISING, SURVEYING, OR FELLING TIMBER; OR TRANSPORTING LOGS
OR OTHER FORESTRY PRODUCTS TO A MILL, PROCESSING PLANT,
RAILROAD, OR OTHER TRANSPORTATION TERMINAL IF THE NUMBER OF
EMPLOYEES EMPLOYED BY HIS EMPLOYER IN SUCH FORESTRY OR
LUMBERING OPERATIONS DOES NOT EXCEED EIGHT.~~

-end-